



State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 03/19/2009 (Per: RCT)





Appendix A ... Part 06 of 06

 The 2007 drafting file for LRB-0447

has been transferred to the drafting file for

2009 LRB-0203

 This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0447/P2dn
RCT&MES:kjfrs

May 30, 2008

This is a redraft of the proposal to revamp the farmland preservation program.

Proposed s. 91.46 uses the words "unnecessarily" and "necessary" in some of the conditions that must be met to allow certain uses as conditional uses in farmland preservation zoning districts. In the /P1 version of the draft, I raised questions about the standards that were intended to be used in applying those conditions. The response to the questions in the redraft instructions makes me think that using "unnecessarily" and "necessary" without more does not accurately capture the intended meaning of the conditions. Part of my job is to try to ensure that statutory language captures the intended meaning as closely as possible.

According to the dictionary, "unnecessarily" means "not by necessity" and "necessity" means "the quality or state or being of necessary." "Necessary" means "absolutely needed" "required" or "essential." In the /P1 draft, I was attempting to ask under what conditions the conversion of prime farmland from agricultural use in order to site a nonfarm residence would be absolutely needed. Another way to get at it would be to ask: necessary to achieve what goal or end? The conversion of prime farmland in order to site a nonfarm residence is necessary to accomplish what? Frequently, the word "necessary" is followed by "for," "to," or "in order to."

The response to my questions was that the draft intentionally gives local governments discretion to make the determinations based on the widely variable facts of each case. I think a person who wished to challenge a local government's decision could argue that the draft actually gives local governments very little discretion because "necessary" is such a strong word. It would then be up to a court to decide whether the law gives local governments much discretion and how any discretion must be exercised.

For provisions like proposed s. 91.46 (4) (a), perhaps the draft could say something to the effect that the local government must determine that the use serves the public interest and the location is the best one available. For provisions like proposed s. 91.46 (4) (b), perhaps the draft could require the local government to weigh the effects of the conversion and determine that the benefits outweigh the costs. Proposed s. 91.46 (4) (d) might require that the effect on other farmland be minimized.

There are many different ways that the conditions in proposed s. 91.46 could be expressed and I will do whatever I can to draft statutory language that captures the department's intent in this respect.

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Because the draft contains, in effect, two farmland preservation tax credits, there were quite a few cross-references that needed to be changed. I was pretty sure that some should be changed, and I changed those. I was unsure about whether others should be changed, so I added a "****NOTE" with a question. There are also quite a few other statutes that you need to look at to decide whether the current cross-reference to "subch. IX" is OK, or whether it needs to be modified. Please review the following tax statutes and let me know how you would like them treated: ss. 71.03 (6m), 71.07 (3m) (c) 1., 71.07 (6e) (c) 2., 71.47 (2m) (c) 1., 71.49 (1) (f), and 71.88 (2) (b).

Current law requires a claimant to be domiciled in this state during the entire year. See s. 71.58 (1) (intro.). Do you want a similar provision in this bill? If not, do you want the credit prorated for nonresidents or part-year residents based on the ratio of their Wisconsin adjusted gross income to their federal AGI?

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PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

1 **AN ACT *to repeal*** 20.085 (2) (d), 23.094 (2) (c) 3., 71.07 (2fd), 71.28 (1fd), 71.47
2 (1fd), 92.04 (2) (c), 92.104, 92.105 and 92.106; ***to amend*** 66.0721 (1) (b), 71.07
3 (3m) (a) 3., 71.07 (3m) (a) 4., 71.08 (1) (intro.), 71.10 (4) (i), 71.28 (2m) (a) 3.,
4 71.28 (2m) (a) 4., 71.30 (3) (f), 71.47 (2m) (a) 3., 71.47 (2m) (a) 4., 71.49 (1) (f),
5 71.57, 71.58 (intro.), 71.58 (1) (intro.), 71.58 (1) (b), 71.58 (1) (d), 71.58 (1) (e),
6 71.58 (1) (f), 71.58 (3), 71.58 (8), 71.59 (1) (a), 71.59 (1) (b) (intro.), 71.59 (1) (b)
7 4., 71.59 (2) (intro.), 71.59 (2) (d), 71.59 (2) (e), 71.60 (1) (b), 71.61, 92.05 (3) (L),
8 92.14 (2) (e), 92.14 (3) (a) 1., 92.14 (3) (d), 101.143 (4) (ei) 1m. a., 101.143 (4) (ei)
9 1m. b., 281.16 (3) (e), 281.65 (5) (b), 281.65 (5) (d) and 281.65 (5) (e); ***to repeal***
10 ***and recreate*** chapter 91 and 165.25 (4) (ar); and ***to create*** 71.07 (3m) (e), 71.10
11 (4) (de), 71.28 (2m) (e), 71.47 (2m) (e), 71.61 (6) and 71.613 of the statutes;

1 **relating to:** farmland preservation, the farmland preservation tax credit, the
2 farmland tax relief credit, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 20.085 (2) (d) of the statutes is repealed.

4 **SECTION 2.** 23.094 (2) (c) 3. of the statutes is repealed.

5 **SECTION 3.** 66.0721 (1) (b) of the statutes is amended to read:

6 66.0721 (1) (b) “Eligible farmland” means a parcel of 35 or more acres of
7 contiguous land which is devoted exclusively to agricultural use which during the
8 year preceding the year in which the land is subject to a special assessment under
9 this section produced gross farm profits, as defined in s. ~~71.58 (4)~~ 71.613 (1) (g), of
10 not less than \$6,000 or which, during the 3 years preceding the year in which the land
11 is subject to a special assessment under this section, produced gross farm profits, as
12 defined in s. ~~71.58 (4)~~ 71.613 (1) (g), of not less than \$18,000.

13 **SECTION 4.** 71.07 (2fd) of the statutes is repealed.

14 **SECTION 5.** 71.07 (3m) (a) 3. of the statutes is amended to read:

15 71.07 (**3m**) (a) 3. “Farmland” means 35 or more acres of real property, exclusive
16 of improvements, in this state, in agricultural use, as defined in s. 91.01 (1), 2005
17 stats., and owned by the claimant or any member of the claimant’s household during
18 the taxable year for which a credit under this subsection is claimed if the farm of
19 which the farmland is a part, during that year, produced not less than \$6,000 in gross
20 farm profits resulting from agricultural use, as defined in s. 91.01 (1), 2005 stats., or

1 if the farm of which the farmland is a part, during that year and the 2 years
2 immediately preceding that year, produced not less than \$18,000 in such profits, or
3 if at least 35 acres of the farmland, during all or part of that year, was enrolled in the
4 conservation reserve program under 16 USC 3831 to 3836.

5 **SECTION 6.** 71.07 (3m) (a) 4. of the statutes is amended to read:

6 71.07 (3m) (a) 4. "Gross farm profits" means gross receipts, excluding rent,
7 from agricultural use, as defined in s. 91.01 (1), 2005 stats., including the fair market
8 value at the time of disposition of payments in kind for placing land in federal
9 programs or payments from the federal dairy termination program under 7 USC
10 1446 (d), less the cost or other basis of livestock or other items purchased for resale
11 which are sold or otherwise disposed of during the taxable year.

12 **SECTION 7.** 71.07 (3m) (e) of the statutes is created to read:

13 71.07 (3m) (e) *Sunset.* No new claim may be filed under this subsection for a
14 taxable year that begins after December 31, 2008.

15 **SECTION 8.** 71.08 (1) (intro.) of the statutes, as affected by 2007 Wisconsin Acts
16 20 and 97, is amended to read:

17 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
18 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under
19 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), ~~(2fd)~~, (3m), (3n), (3p),
20 (3s), (3t), (3w), ~~(5b)~~, ~~(5d)~~, ~~(5e)~~, (5f), (6), (6e), and (9e), 71.28 (1dd), (1de), (1di), (1dj),
21 (1dL), (1ds), (1dx), ~~(1fd)~~, (2m), (3), (3n), (3t), and (3w), ~~and~~ 71.47 (1dd), (1de), (1di),
22 (1dj), (1dL), (1ds), (1dx), ~~(1fd)~~, (2m), (3), (3n), (3t), and (3w), and ~~subchs. ss. 71.57 to~~
23 71.61 and subch. VIII and IX and payments to other states under s. 71.07 (7), is less
24 than the tax under this section, there is imposed on that natural person, married

1 couple filing jointly, trust or estate, instead of the tax under s. 71.02, an alternative
2 minimum tax computed as follows:

3 **SECTION 9.** 71.10 (4) (de) of the statutes is created to read:

4 71.10 (4) (de) The farmland preservation credit under s. 71.613.

5 **SECTION 10.** 71.10 (4) (i) of the statutes, as affected by 2007 Wisconsin Acts 20
6 and 96, is amended to read:

7 71.10 (4) (i) The total of claim of right credit under s. 71.07 (1), farmland
8 preservation credit under ~~subch. IX ss. 71.57 to 71.61~~, homestead credit under subch.
9 VIII, farmland tax relief credit under s. 71.07 (3m), ~~farmers' drought property tax~~
10 ~~credit under s. 71.07 (2fd)~~, dairy manufacturing facility investment credit under s.
11 71.07 (3p), film production services credit under s. 71.07 (5f) (b) 2., veterans and
12 surviving spouses property tax credit under s. 71.07 (6e), enterprise zone jobs credit
13 under s. 71.07 (3w), earned income tax credit under s. 71.07 (9e), estimated tax
14 payments under s. 71.09, and taxes withheld under subch. X.

15 **SECTION 11.** 71.28 (1fd) of the statutes is repealed.

16 **SECTION 12.** 71.28 (2m) (a) 3. of the statutes is amended to read:

17 71.28 (2m) (a) 3. "Farmland" means 35 or more acres of real property, exclusive
18 of improvements, in this state, in agricultural use, as defined in s. 91.01 (1), 2005
19 stats., and owned by the claimant or any member of the claimant's household during
20 the taxable year for which a credit under this subsection is claimed if the farm of
21 which the farmland is a part, during that year, produced not less than \$6,000 in gross
22 farm profits resulting from agricultural use, as defined in s. 91.01 (1), 2005 stats., or
23 if the farm of which the farmland is a part, during that year and the 2 years
24 immediately preceding that year, produced not less than \$18,000 in such profits, or

1 if at least 35 acres of the farmland, during all or part of that year, was enrolled in the
2 conservation reserve program under 16 USC 3831 to 3836.

3 **SECTION 13.** 71.28 (2m) (a) 4. of the statutes is amended to read:

4 71.28 (2m) (a) 4. “Gross farm profits” means gross receipts, excluding rent,
5 from agricultural use, as defined in s. 91.01 (1), 2005 stats., including the fair market
6 value at the time of disposition of payments in kind for placing land in federal
7 programs or payments from the federal dairy termination program under 7 USC
8 1446 (d), less the cost or other basis of livestock or other items purchased for resale
9 which are sold or otherwise disposed of during the taxable year.

10 **SECTION 14.** 71.28 (2m) (e) of the statutes is created to read:

11 71.28 (2m) (e) *Sunset.* No new claim may be filed under this subsection for a
12 taxable year that begins after December 31, 2008.

13 **SECTION 15.** 71.30 (3) (f) of the statutes is amended to read:

14 71.30 (3) (f) The total of ~~farmers’ drought property tax credit under s. 71.28~~
15 ~~(1fd)~~, farmland preservation credit under subch. IX, farmland tax relief credit under
16 s. 71.28 (2m), dairy manufacturing facility investment credit under s. 71.28 (3p),
17 enterprise zone jobs credit under s. 71.28 (3w), film production services credit under
18 s. 71.28 (5f) (b) 2., and estimated tax payments under s. 71.29.

19 **SECTION 16.** 71.47 (1fd) of the statutes is repealed.

20 **SECTION 17.** 71.47 (2m) (a) 3. of the statutes is amended to read:

21 71.47 (2m) (a) 3. “Farmland” means 35 or more acres of real property, exclusive
22 of improvements, in this state, in agricultural use, as defined in s. 91.01 (1), 2005
23 stats., and owned by the claimant or any member of the claimant’s household during
24 the taxable year for which a credit under this subsection is claimed if the farm of
25 which the farmland is a part, during that year, produced not less than \$6,000 in gross

1 farm profits resulting from agricultural use, as defined in s. 91.01 (1), 2005 stats., or
2 if the farm of which the farmland is a part, during that year and the 2 years
3 immediately preceding that year, produced not less than \$18,000 in such profits, or
4 if at least 35 acres of the farmland, during all or part of that year, was enrolled in the
5 conservation reserve program under 16 USC 3831 to 3836.

6 **SECTION 18.** 71.47 (2m) (a) 4. of the statutes is amended to read:

7 71.47 (2m) (a) 4. “Gross farm profits” means gross receipts, excluding rent,
8 from agricultural use, as defined in s. 91.01 (1), 2005 stats., including the fair market
9 value at the time of disposition of payments in kind for placing land in federal
10 programs or payments from the federal dairy termination program under 7 USC
11 1446 (d), less the cost or other basis of livestock or other items purchased for resale
12 which are sold or otherwise disposed of during the taxable year.

13 **SECTION 19.** 71.47 (2m) (e) of the statutes is created to read:

14 71.47 (2m) (e) *Sunset.* No new claim may be filed under this subsection for a
15 taxable year that begins after December 31, 2008.

16 **SECTION 20.** 71.49 (1) (f) of the statutes, as affected by 2007 Wisconsin Act 20,
17 is amended to read:

18 71.49 (1) (f) The total of ~~farmers’ drought property tax credit under s. 71.47~~
19 ~~(1fd)~~, farmland preservation credit under subch. IX, farmland tax relief credit under
20 s. 71.47 (2m), dairy manufacturing facility investment credit under s. 71.47 (3p),
21 enterprise zone jobs credit under s. 71.47 (3w), film production services credit under
22 s. 71.47 (5f) (b) 2., and estimated tax payments under s. 71.48.

23 **SECTION 21.** 71.57 of the statutes is amended to read:

24 **71.57 Purpose.** The purpose of this subchapter ss. 71.58 to 71.61 is to provide
25 credit to owners of farmland which is subject to agricultural use restrictions, through

1 a system of income or franchise tax credits and refunds and appropriations from the
2 general fund.

3 **SECTION 22.** 71.58 (intro.) of the statutes is amended to read:

4 **71.58 Definitions.** (intro.) In ~~this subchapter~~ ss. 71.57 to 71.61:

5 **SECTION 23.** 71.58 (1) (intro.) of the statutes is amended to read:

6 71.58 (1) (intro.) "Claimant" means an owner of farmland, as defined in s. 91.01
7 (9), 2005 stats., domiciled in this state during the entire year for which a credit under
8 ~~this subchapter~~ ss. 71.57 to 71.61 is claimed, except as follows:

9 **SECTION 24.** 71.58 (1) (b) of the statutes is amended to read:

10 71.58 (1) (b) If any person in a household has claimed or will claim credit under
11 subch. VIII, all persons from that household are ineligible to claim any credit under
12 ~~this subchapter~~ ss. 71.57 to 71.61 for the year to which the credit under subch. VIII
13 pertained.

***NOTE: Do you want to apply this limitation to the credit under s. 71.613?

14 **SECTION 25.** 71.58 (1) (d) of the statutes is amended to read:

15 71.58 (1) (d) For purposes of filing a claim under ~~this subchapter~~ ss. 71.57 to
16 71.61, the personal representative of an estate and the trustee of a trust shall be
17 deemed owners of farmland. "Claimant" does not include the estate of a person who
18 is a nonresident of this state on the person's date of death, a trust created by a
19 nonresident person, a trust which receives Wisconsin real property from a
20 nonresident person or a trust in which a nonresident settlor retains a beneficial
21 interest.

22 **SECTION 26.** 71.58 (1) (e) of the statutes is amended to read:

1 71.58 (1) (e) For purposes of filing a claim under ~~this subchapter ss. 71.57 to~~
2 71.61, when land is subject to a land contract, the claimant shall be the vendee under
3 the contract.

4 **SECTION 27.** 71.58 (1) (f) of the statutes is amended to read:

5 71.58 (1) (f) For purposes of filing a claim under ~~this subchapter ss. 71.57 to~~
6 71.61, when a guardian has been appointed in this state for a ward who owns the
7 farmland, the claimant shall be the guardian on behalf of the ward.

8 **SECTION 28.** 71.58 (3) of the statutes is amended to read:

9 71.58 (3) “Farmland” means 35 or more acres of real property in this state
10 owned by the claimant or any member of the claimant’s household during the taxable
11 year for which a credit under ~~this subchapter ss. 71.57 to 71.61~~ is claimed if the
12 farmland, during that year, produced not less than \$6,000 in gross farm profits
13 resulting from the farmland’s agricultural use, as defined in s. 91.01 (1), 2005 stats.,
14 or if the farmland, during that year and the 2 years immediately preceding that year,
15 produced not less than \$18,000 in such profits, or if at least 35 acres of the farmland,
16 during all or part of that year, was enrolled in the conservation reserve program
17 under 16 USC 3831 to 3836.

18 **SECTION 29.** 71.58 (8) of the statutes is amended to read:

19 71.58 (8) “Property taxes accrued” means property taxes, exclusive of special
20 assessments, delinquent interest and charges for service, levied on the farmland and
21 improvements owned by the claimant or any member of the claimant’s household in
22 any calendar year under ch. 70, less the tax credit, if any, afforded in respect of the
23 property by s. 79.10. “Property taxes accrued” shall not exceed \$6,000. If farmland
24 is owned by a tax-option corporation, a limited liability company or by 2 or more
25 persons or entities as joint tenants, tenants in common or partners or is marital

1 property or survivorship marital property and one or more such persons, entities or
2 owners is not a member of the claimant's household, "property taxes accrued" is that
3 part of property taxes levied on the farmland, reduced by the tax credit under s.
4 79.10, that reflects the ownership percentage of the claimant and the claimant's
5 household. For purposes of ~~this subsection~~ ss. 71.57 to 71.61, property taxes are
6 "levied" when the tax roll is delivered to the local treasurer for collection. If farmland
7 is sold during the calendar year of the levy the "property taxes accrued" for the seller
8 is the amount of the tax levy, reduced by the tax credit under s. 79.10, prorated to each
9 in the closing agreement pertaining to the sale of the farmland, except that if the
10 seller does not reimburse the buyer for any part of those property taxes there are no
11 "property taxes accrued" for the seller, and the "property taxes accrued" for the buyer
12 is the property taxes levied on the farmland, reduced by the tax credit under s. 79.10,
13 minus, if the seller reimburses the buyer for part of the property taxes, the amount
14 prorated to the seller in the closing agreement. With the claim for credit under ~~this~~
15 ~~subchapter~~ ss. 71.57 to 71.61, the seller shall submit a copy of the closing agreement
16 and the buyer shall submit a copy of the closing agreement and a copy of the property
17 tax bill.

18 **SECTION 30.** 71.59 (1) (a) of the statutes is amended to read:

19 71.59 (1) (a) Subject to the limitations provided in ~~this subchapter~~ ss. 71.57 to
20 71.61 and s. 71.80 (3) and (3m), a claimant may claim as a credit against Wisconsin
21 income or franchise taxes otherwise due, the amount derived under s. 71.60. If the
22 allowable amount of claim exceeds the income or franchise taxes otherwise due on
23 or measured by the claimant's income or if there are no Wisconsin income or franchise
24 taxes due on or measured by the claimant's income, the amount of the claim not used
25 as an offset against income or franchise taxes shall be certified to the department of

1 administration for payment to the claimant by check, share draft or other draft
2 drawn on the general fund.

3 **SECTION 31.** 71.59 (1) (b) (intro.) of the statutes is amended to read:

4 71.59 (1) (b) (intro.) Every claimant under ~~this subchapter~~ ss. 71.57 to 71.61
5 shall supply, at the request of the department, in support of the claim, all of the
6 following:

7 **SECTION 32.** 71.59 (1) (b) 4. of the statutes is amended to read:

8 71.59 (1) (b) 4. Certification by the claimant that each county land conservation
9 committee with jurisdiction over the farmland has been notified that the claimant
10 intends to submit a claim under ~~this subchapter~~ ss. 71.57 to 71.61.

11 **SECTION 33.** 71.59 (2) (intro.) of the statutes is amended to read:

12 71.59 (2) INELIGIBLE CLAIMS. (intro.) No credit shall be allowed under ~~this~~
13 ~~subchapter~~ ss. 71.57 to 71.61:

14 **SECTION 34.** 71.59 (2) (d) of the statutes is amended to read:

15 71.59 (2) (d) For property taxes accrued on farmland zoned for exclusive
16 agricultural use under an ordinance certified under subch. V of ch. 91, 2005 stats.,
17 which is granted a special exception or conditional use permit for a use which is not
18 an agricultural use, as defined in s. 91.01 (1), 2005 stats.

19 **SECTION 35.** 71.59 (2) (e) of the statutes is amended to read:

20 71.59 (2) (e) If the department determines that ownership of the farmland has
21 been transferred to the claimant primarily for the purpose of maximizing benefits
22 under ~~this subchapter~~ ss. 71.57 to 71.61.

23 **SECTION 36.** 71.60 (1) (b) of the statutes is amended to read:

24 71.60 (1) (b) The credit allowed under ~~this subchapter~~ ss. 71.57 to 71.61 shall
25 be limited to 90% of the first \$2,000 of excessive property taxes plus 70% of the 2nd

1 \$2,000 of excessive property taxes plus 50% of the 3rd \$2,000 of excessive property
2 taxes. The maximum credit shall not exceed \$4,200 for any claimant. The credit for
3 any claimant shall be the greater of either the credit as calculated under ~~this~~
4 ~~subchapter ss. 71.57 to 71.61~~ as it exists at the end of the year for which the claim
5 is filed or as it existed on the date on which the farmland became subject to a current
6 agreement under subch. II or III of ch. 91, 2005 stats., using for such calculations
7 household income and property taxes accrued of the year for which the claim is filed.

8 **SECTION 37.** 71.61 of the statutes is amended to read:

9 **71.61 General provisions. (1)** DEPARTMENT MAY APPLY CREDIT AGAINST ANY TAX
10 LIABILITY. The amount of any claim otherwise payable under ~~this subchapter ss. 71.57~~
11 ~~to 71.60~~ may be applied by the department against any amount certified to the
12 department under s. 71.93 or 71.935 or may be credited under s. 71.80 (3) or (3m).

13 **(2) CREDITS ARE INCOME.** All amounts allowed as credits under ~~this subchapter~~
14 ~~ss. 71.57 to 71.60~~ constitute income for income and franchise tax purposes and are
15 reportable as such in the year of receipt.

16 **(3) INTEREST NOT ALLOWED.** No interest may be allowed on any payment made
17 to a claimant under ~~this subchapter ss. 71.57 to 71.60.~~

18 **(3m) ADMINISTRATION.** The income tax provisions in this chapter relating to
19 assessments, refunds, appeals and collection apply to the credit under ~~this~~
20 ~~subchapter ss. 71.57 to 71.60.~~

21 **(4) PENALTIES.** Unless specifically provided in ~~this subchapter ss. 71.57 to~~
22 ~~71.60,~~ the penalties under subch. XIII apply for failure to comply with ~~this~~
23 ~~subchapter ss. 71.57 to 71.60~~ unless the context requires otherwise.

24 **(5) TABLE PREPARED BY DEPARTMENT.** The department shall prepare a table under
25 which claims under ~~this subchapter ss. 71.57 to 71.60~~ shall be determined.

1 **SECTION 38.** 71.61 (6) of the statutes is created to read:

2 **71.61 (6) PROHIBITION OF NEW CLAIMS.** For taxable years beginning after
3 December 31, 2008, no new claims for a credit may be filed under ss. 71.57 to 71.61,
4 but if an otherwise eligible claimant is subject to a farmland preservation agreement,
5 as defined in s. 91.01 (7), 2005 stats., that is in effect on January 1, 2009, the claimant
6 may continue to file a claim for the credit under ss. 71.57 to 71.61 until the farmland
7 preservation agreement expires, except that no claimant who files a claim under ss.
8 71.57 to 71.61 may file a claim under s. 71.613.

 ****NOTE: Is this prohibition against a “double-dip” consistent with your intent?

9 **SECTION 39.** 71.613 of the statutes is created to read:

10 **71.613 Farmland preservation credit, 2009 and beyond. (1) DEFINITIONS.**

11 In this section:

12 (a) “Agricultural use” has the meaning given in s. 91.01 (2).

13 (b) “Claimant” means a person who owns farmland in this state, or who owned
14 farmland in this state during the taxable year to which the claim under this section
15 relates, and who files a claim under this section.

16 (c) “Department” means the department of revenue.

17 (d) “Farm” means a farm, as defined in s. 91.01 (13), that has produced at least
18 \$6,000 in gross farm profits during the taxable year to which the claim relates or, in
19 the taxable year to which the claim relates and the 2 immediately preceding taxable
20 years, at least \$18,000 in gross farm profits.

21 (e) “Farmland preservation agreement” has the meaning given in s. 91.01 (15).

22 (f) “Farmland preservation zoning district has the meaning given in s. 91.01
23 (18).

1 (g) “Gross farm profits” means gross receipts from agricultural use of a farm,
2 less the cost or other basis of livestock or other agricultural items purchased for
3 resale which are sold or otherwise disposed of during the taxable year.

4 (h) “Qualifying acres” means the number of acres of a farm that correlate to a
5 claimant’s percentage of ownership interest in a farm to which one of the following
6 applies:

7 1. The farm is wholly or partially covered by a farmland preservation
8 agreement.

9 2. The farm is located in a farmland preservation zoning district at the end of
10 the taxable year to which the claim relates.

11 3. If the claimant transferred the claimant’s ownership interest in the farm
12 during the taxable year to which the claim relates, the farm was wholly or partially
13 covered by a farmland preservation agreement, or the farm was located in a farmland
14 preservation zoning district, on the date on which the claimant transferred the
15 ownership interest. For the purposes of this subdivision, a land contract is a transfer
16 of ownership interest.

17 **(2) FILING CLAIMS.** Subject to the limitations and conditions provided in sub. (3)
18 and in s. 91.36 (8) (b), a claimant may claim as a credit against the tax imposed under
19 s. 71.02, 71.23, or 71.43, up to the amount of those taxes, an amount calculated by
20 multiplying the claimant’s qualifying acres by one of the following amounts:

21 (a) Ten dollars, if the qualifying acres are located in a farmland preservation
22 zoning district and are also subject to a farmland preservation agreement that is
23 entered into after the effective date of this paragraph [revisor inserts date].

24 (b) Seven dollars and 50 cents, if the qualifying acres are located in a farmland
25 preservation zoning district but are not subject to a farmland preservation

1 agreement that is entered into after the effective date of this paragraph [revisor
2 inserts date].

3 (c) Five dollars, if the qualifying acres are subject to a farmland preservation
4 agreement that is entered into after the effective date of this paragraph [revisor
5 inserts date], but are not located in a farmland preservation zoning district.

6 **(3) LIMITATIONS AND CONDITIONS.** (a) No credit may be allowed under this section
7 unless all of the following apply:

8 1. The claimant has paid, or is legally responsible for paying, the property taxes
9 levied against the qualifying acres to which the claim relates.

10 2. At the end of the taxable year to which the claim relates or, on the date on
11 which the person transferred the person's ownership interest in the farm if the
12 transfer occurs during the taxable year to which the claim relates, there was no
13 outstanding notice of noncompliance issued against the farm under s. 91.82 (2).

14 (b) If a farm is jointly owned by 2 or more persons who file separate income or
15 franchise tax returns, each person may claim a credit under this section based on the
16 person's ownership interest in the farm.

17 (c) If a person acquires or transfers ownership of a farm during a taxable year
18 for which a claim may be filed under this section, each person may file a claim under
19 this section based on the person's liability for the property taxes levied on the
20 person's qualifying acres for the taxable year to which the claim relates.

21 (d) A claimant shall claim the credit under this section on a form prepared by
22 the department and shall submit any documentation required by the department.

23 (e) No credit may be allowed under this section unless it is claimed within the
24 time period under s. 71.75 (2).

(4) ADMINISTRATION. The department may enforce the credit under this section and may take any action, conduct any proceeding, and proceed as it is authorized in respect to taxes under this chapter. The income tax provisions in this chapter relating to assessments, refunds, appeals, collection, interest, and penalties apply to the credit under this section.

SECTION 40. Chapter 91 of the statutes is repealed and recreated to read:

CHAPTER 91

FARMLAND PRESERVATION

SUBCHAPTER I

DEFINITIONS AND GENERAL PROVISIONS

91.01 Definitions. In this chapter:

(1) “Accessory use” means any of the following land uses on a farm:

(a) A building, structure, or improvement that is an integral part of, or is incidental to, an agricultural use.

(b) An activity or business operation that is an integral part of, or incidental to, an agricultural use.

(c) A farm residence.

(d) A business, activity, or enterprise, whether or not associated with an agricultural use, that is conducted by the owner or operator of a farm, that requires no buildings, structures, or improvements other than those described in par. (a) or (c), that employs no more than 4 full-time employees annually, and that does not impair or limit the current or future agricultural use of the farm or of other protected farmland.

(e) Any other use that the department, by rule, identifies as an accessory use.

(2) “Agricultural use” means any of the following:

1 (a) Any of the following activities conducted for the purpose of producing an
2 income or livelihood:

3 1. Crop or forage production.

4 2. Keeping livestock.

5 3. Beekeeping.

6 4. Nursery, sod, or Christmas tree production.

7 4m. Floriculture.

8 5. Aquaculture.

9 6. Fur farming.

10 7. Forest management.

11 8. Enrolling land in a federal agricultural commodity payment program or a
12 federal or state agricultural land conservation payment program.

13 (b) Any other use that the department, by rule, identifies as an agricultural use.

14 (3) "Agriculture-related use" means any of the following:

15 (a) An agricultural equipment dealership, facility providing agricultural
16 supplies, facility for storing or processing agricultural products, or facility for
17 processing agricultural wastes.

18 (b) Any other use that the department, by rule, identifies as an
19 agriculture-related use.

20 (5) "Base farm tract" means one of the following:

21 (a) All land, whether one parcel or 2 or more contiguous parcels, that is in a
22 farmland preservation zoning district and that is part of a single farm when the
23 department under s. 91.36 (1) first certifies the farmland preservation zoning
24 ordinance covering the land, regardless of any subsequent changes in the size of the
25 farm.

1 (b) Any other tract that the department by rule defines as a base farm tract.

2 (6) “Certified farmland preservation plan” means a farmland preservation
3 plan that is certified as determined under s. 91.12.

4 (7) “Certified farmland preservation zoning ordinance” means a farmland
5 preservation zoning ordinance that is certified as determined under s. 91.32.

6 (8) “Chief elected official” means the mayor of a city or, if the city is organized
7 under subch. I of ch. 64, the president of the council of that city, the village president
8 of a village, the town board chairperson of a town, or the county executive of a county,
9 or, if the county does not have a county executive, the chairperson of the county board
10 of supervisors.

11 (9) “Comprehensive plan” has the meaning given in s. 66.1001 (1) (a).

12 (10) “Conditional use” means a use allowed under a conditional use permit,
13 special exception, or other special zoning permission issued by a political
14 subdivision.

15 (11) “County land conservation committee” means a committee created under
16 s. 92.06 (1).

17 (12) “Department” means the department of agriculture, trade and consumer
18 protection.

19 (13) “Farm” means all land under common ownership that is primarily devoted
20 to agricultural use.

21 (14) “Farm acreage” means size of a farm in acres.

22 (15) “Farmland preservation agreement” means any of the following
23 agreements between an owner of land and the department under which the owner
24 agrees to restrict the use of land in return for tax credits:

1 (a) A farmland preservation agreement or transition area agreement entered
2 into under s. 91.13, 2005 stats., or s. 91.14, 2005 stats.

3 (b) An agreement entered into under s. 91.60 (1).

4 (16) “Farmland preservation plan” means a plan for the preservation of
5 farmland in a county, including an agricultural preservation plan under subch. IV
6 of ch. 91, 2005 stats.

7 (17) “Farmland preservation area” means an area that is planned primarily
8 for agricultural use or agriculture-related use, or both, and that is one of the
9 following:

10 (a) Identified as an agricultural preservation area or transition area in a
11 farmland preservation plan described in s. 91.12 (1).

12 (b) Identified under s. 91.10 (1) (d) in a farmland preservation plan described
13 in s. 91.12 (2).

14 (18) “Farmland preservation zoning district” means any of the following:

15 (a) An area zoned for exclusive agricultural use under an ordinance described
16 in s. 91.32 (1).

17 (b) A farmland preservation zoning district designated under s. 91.38 (1) (c) in
18 an ordinance described in s. 91.36 (2).

19 (19) “Farm residence” means any of the following structures that is located on
20 a farm:

21 (a) A single-family or duplex residence that is the only residential structure
22 on the farm or is occupied by any of the following:

23 1. An owner or operator of the farm.

24 2. A parent or child of an owner or operator of the farm.

1 3. An individual who earns more than 50 percent of his or her gross income from
2 the farm.

3 (b) A migrant labor camp that is certified under s. 103.92.

4 **(20)** “Gross farm profits” has the meaning given in s. 71.613 (1) (g).

5 **(20m)** “Livestock” means bovine animals, equine animals, goats, poultry,
6 sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and
7 farm-raised fish.

8 **(21)** “Nonfarm residence” means a residence other than a farm residence.

9 **(22)** “Nonfarm residential acreage” means the total number of acres of all
10 parcels on which nonfarm residences are located.

11 **(22m)** “Overlay district” means a zoning district that is superimposed on one
12 or more other zoning districts and imposes additional restrictions on the underlying
13 districts.

14 **(23)** “Owner” means a person who has an ownership interest in land.

15 **(23m)** “Permitted use” means a use that is allowed without a conditional use
16 permit, special exception, or other special zoning permission.

17 **(24)** “Political subdivision” means a city, village, town, or county.

18 **(25)** “Prime farmland” means any of the following:

19 (a) An area with a class I or class II land capability classification as identified
20 by the natural resource conservation service of the federal department of
21 agriculture.

22 (b) Land, other than land described in par. (a), that is identified as prime
23 farmland in a certified farmland preservation plan.

1 (26) “Prior nonconforming use” means a land use that does not conform with
2 a farmland preservation zoning ordinance, but that existed lawfully before the
3 farmland preservation zoning ordinance was enacted.

4 (27) “Protected farmland” means land that is located in a farmland
5 preservation zoning district, is covered by a farmland preservation agreement, or is
6 otherwise legally protected from nonagricultural development.

7 (28) “Taxable year” has the meaning given in s. 71.01 (12).

8 (29) “Working lands enterprise area” means an area designated in accordance
9 with the rules under s. 91.60 (2) (c).

10 **91.02 Rule making.** (1) The department shall promulgate rules that set forth
11 technical specifications for farmland preservation zoning maps under s. 91.38 (1) (d).

12 (2) The department may promulgate rules for the administration of this
13 chapter, including rules that do any of the following:

14 (a) Identify accessory uses under s. 91.01 (1) (e).

15 (b) Identify agricultural uses under s. 91.01 (2) (b).

16 (c) Identify agriculture–related uses under s. 91.01 (3) (b).

17 (d) Identify base farm tracts under s. 91.01 (5) (b).

18 (e) Specify standards for certification under s. 91.18 (1) (b).

19 (f) Require information in an application for certification of a farmland
20 preservation plan under s. 91.20 (4).

21 (g) Specify types of ordinance amendments for which certification is required
22 under s. 91.36 (8) (b) 3.

23 (h) Specify exceptions to the requirement that land in a farmland preservation
24 zoning district be included in a farmland preservation plan area under s. 91.38 (1)
25 (g).

1 (i) Specify requirements for certification of a farmland preservation zoning
2 ordinance under s. 91.38 (1) (i).

3 (j) Require information in an application for certification of a farmland
4 preservation zoning ordinance under s. 91.40 (5).

5 (k) Authorize additional uses in a farmland preservation zoning district under
6 s. 91.42 (4).

7 (L) Authorize additional uses as permitted uses in a farmland preservation
8 zoning district under s. 91.44 (1) (g).

9 (m) Authorize additional uses as conditional uses in a farmland preservation
10 zoning district under s. 91.46 (1) (j).

11 (n) Specify conversion fees under s. 91.48 (1) (b).

12 (o) Specify criteria for designating working lands enterprise areas under s.
13 91.60 (2) (c).

14 (p) Require information in an application for a farmland preservation
15 agreement under s. 91.64 (2) (h).

16 (q) Specify conversion fees under s. 91.66 (1) (c).

17 (r) Prescribe procedures for compliance monitoring under s. 91.82 (3).

18 **91.03 Intergovernmental cooperation.** State agencies shall cooperate with
19 the department in the administration of this chapter and in other matters related
20 to the preservation of farmland in this state. State agencies shall, to the extent
21 feasible, cooperate in sharing and standardizing relevant information, identifying
22 and mapping significant agricultural resources, and planning and evaluating the
23 impact of state actions on agriculture.

24 **91.04 Department to report.** At least once every 2 years, beginning not later
25 than December 31, 2011, the department shall submit a farmland preservation

1 report to the board of agriculture, trade and consumer protection and provide copies
2 of the report to the department of revenue and the department of administration.
3 The department shall prepare the report in cooperation with the department of
4 revenue and shall include all of the following in the report:

5 (1) A review and analysis of farmland availability, uses, and use trends in this
6 state, including information related to farmland conversion statewide and by county.

7 (2) A review and analysis of relevant information related to the farmland
8 preservation program under this chapter and associated tax credit claims under
9 subch. IX of ch. 71, including information related to all of the following:

10 (a) Participation in the program by political subdivisions and landowners.

11 (b) Tax credit claims by landowners, including the number of claimants, the
12 amount of credits claimed, acreage covered by tax credit claims, the amount of credits
13 claimed under zoning ordinances and under farmland preservation agreements, and
14 relevant projections and trends.

15 (c) The number, identity, and location of counties with certified farmland
16 preservation plans.

17 (d) Trends and developments related to certification of farmland preservation
18 plans.

19 (e) The number, identity, and location of political subdivisions with certified
20 farmland preservation zoning ordinances.

21 (f) Trends and developments related to certification of farmland preservation
22 zoning ordinances.

23 (g) The number, nature, and location of working lands enterprise areas.

1 (h) The number and location of farms covered by farmland preservation
2 agreements, including new farmland preservation agreements, and the number and
3 location of farms for which farmland preservation agreements have expired.

4 (i) Conservation compliance by landowners under s. 91.80 and compliance
5 activities by county land conservation committees under s. 91.82.

6 (j) Rezoning of land out of farmland preservation zoning districts under s.
7 91.48, including the amounts of conversion fees paid to political subdivisions under
8 s. 91.48 (2).

9 (k) Program costs, cost trends, and cost projections.

10 (L) Key issues related to program performance and key recommendations, if
11 any, for enhancing the program.

12 SUBCHAPTER II

13 FARMLAND PRESERVATION PLANNING

14 **91.10 County plan required.** (1) By January 1, 2015, a county shall adopt
15 a farmland preservation plan that does all of the following:

16 (a) States the county's policy related to farmland preservation and agricultural
17 development, including the development of enterprises related to agriculture.

18 (b) Identifies, describes, and documents other development trends, plans, or
19 needs, that may affect farmland preservation and agricultural development in the
20 county, including trends, plans, or needs related to population and economic growth,
21 housing, transportation, utilities, communications, business development,
22 community facilities and services, energy, waste management, municipal expansion,
23 and environmental preservation.

24 (c) Identifies, describes, and documents all of the following:

1 1. Agricultural uses of land in the county at the time that the farmland
2 preservation plan is adopted, including key agricultural specialities, if any.

3 2. Key agricultural resources, including available land, soil, and water
4 resources.

5 3. Key infrastructure for agriculture, including key processing, storage,
6 transportation, and supply facilities.

7 4. Significant trends in the county related to agricultural land use, agricultural
8 production, enterprises related to agriculture, and the conversion of agricultural
9 lands to other uses.

10 5. Anticipated changes in the nature, scope, location, and focus of agricultural
11 production, processing, supply, and distribution.

12 6. Goals for agricultural development in the county, including goals related to
13 the development of enterprises related to agriculture.

14 7. Actions that the county will take to preserve farmland and to promote
15 agricultural development.

16 8. Key land use issues related to preserving farmland and to promoting
17 agricultural development and plans for addressing those issues.

18 (d) Clearly identifies areas that the county plans to preserve for agricultural
19 use and agriculture-related uses, which may include undeveloped natural resource
20 and open space areas but may not include any area that is planned for
21 nonagricultural development within 15 years after the date on which the plan is
22 adopted.

23 (e) Includes maps that clearly delineate all areas identified under par. (d), so
24 that a reader can easily determine whether a parcel is within an identified area.

1 (f) Clearly correlates the maps under par. (e) with text that describes the types
2 of land uses planned for each area on a map.

3 (g) Identifies programs and other actions that the county and local
4 governmental units within the county may use to preserve the areas identified under
5 par. (d).

6 (2) If the county has a comprehensive plan, the county shall include the
7 farmland preservation plan in its comprehensive plan and shall ensure that the
8 farmland preservation plan is consistent with the comprehensive plan. The county
9 may incorporate information contained in other parts of the comprehensive plan into
10 the farmland preservation plan by reference.

11 (3) To adopt a farmland preservation plan under sub. (1), a county shall follow
12 the procedures under s. 66.1001 (4) for the adoption of a comprehensive plan.

13 (4) The department may provide information and assistance to a county in
14 developing a farmland preservation plan under sub. (1).

15 (5) A county shall notify the department before the county holds a public
16 hearing on a proposed farmland preservation plan under sub. (1) or on any
17 amendment to a farmland preservation plan. The county shall include a copy of the
18 proposed farmland preservation plan or amendment in the notice. The department
19 may review and comment on the plan or amendment.

20 **91.12 Certified plan.** The following county farmland preservation plans are
21 certified, for the purposes of this chapter and s. 71.613:

22 (1) An agricultural preservation plan that was certified under s. 91.06, 2005
23 stats., and the certification has not expired.

24 (2) A farmland preservation plan that was certified under s. 91.16 and the
25 certification has not expired or been withdrawn.

1 **91.14 Expiration of plan certification.** (1) The certification of a county
2 farmland preservation plan that was certified under s. 91.06, 2005 stats., expires on
3 the date provided in the certification or, if the certification does not provide an
4 expiration date, on the following date:

5 (a) December 31, 2011, for a county with a population of 216 or more persons
6 per square mile.

7 (b) December 31, 2012, for a county with a population of 76 to 215 persons per
8 square mile.

9 (c) December 31, 2013, for a county with a population of 46 to 75 persons per
10 square mile.

11 (d) December 31, 2014, for a county with a population of 30 to 45 persons per
12 square mile.

13 (e) December 31, 2015, for a county with a population of 29 or fewer persons
14 per square mile.

15 (2) The certification of a county farmland preservation plan that the
16 department certifies under s. 91.16 expires on the date specified under s. 91.16 (2).

17 (3) The population of a county for the purposes of sub. (1) is the population on
18 the effective date of this subsection [revisor inserts date].

19 **91.16 Certification of plan by the department.** (1) GENERAL. The
20 department may certify a county farmland preservation plan or an amendment to
21 a county farmland preservation plan as provided in this section.

22 (2) CERTIFICATION PERIOD. (a) The department may certify a county farmland
23 preservation plan for a period that does not exceed 10 years. The department shall
24 specify the expiration date of the certification of the farmland preservation plan in
25 the certification.

1 (b) The certification of an amendment to a certified farmland preservation plan
2 expires on the date that the certification of the farmland preservation plan expires,
3 except that the department may treat a comprehensive revision of a certified
4 farmland preservation plan as a new farmland preservation plan and shall specify
5 an expiration date for the certification of the revised farmland preservation plan as
6 provided in par. (a).

7 **(3) SCOPE OF DEPARTMENT REVIEW.** (a) The department may certify a county's
8 farmland preservation plan or an amendment to the farmland preservation plan
9 based on the county's certification under s. 91.20 (3), without conducting any
10 additional review or audit.

11 (b) The department may do any of the following before it certifies a county's
12 farmland preservation plan or amendment:

13 1. Review the farmland preservation plan or amendment for compliance with
14 s. 91.18.

15 2. Review and independently verify the application for certification, including
16 the statement under s. 91.20 (3).

17 **(4) DENIAL OF CERTIFICATION.** The department shall deny a county's application
18 for certification of a farmland preservation plan or amendment if the department
19 finds any of the following:

20 (a) That the farmland preservation plan or amendment does not comply with
21 the requirements in s. 91.18.

22 (b) That the application for certification does not comply with s. 91.20.

23 **(5) WRITTEN DECISION; DEADLINE.** The department shall grant or deny an
24 application for certification under this section no more than 90 days after the day on
25 which the county submits a complete application, unless the county agrees to an

1 extension. The department shall issue its decision in the form required by s. 227.47
2 (1).

3 (6) CONDITIONAL CERTIFICATION. The department may grant an application for
4 certification under this section subject to conditions specified by the department in
5 its decision under sub. (5). The department may certify a farmland preservation plan
6 contingent upon the county board adopting the farmland preservation plan as
7 certified.

8 (7) EFFECTIVE DATE OF CERTIFICATION. A certification under this section takes
9 effect on the day on which the department issues its decision, except that if the
10 department specifies conditions under sub. (6), the certification takes effect on the
11 day on which the department determines that the county has met the conditions.

12 (8) EFFECTIVENESS OF PLAN AMENDMENTS. For purposes of this chapter and s.
13 71.613, a certified farmland preservation plan does not include an amendment
14 adopted after the effective date of this subsection [revisor inserts date], unless the
15 department certifies the amendment.

16 (9) WITHDRAWAL OF CERTIFICATION. The department may withdraw a
17 certification that it granted under sub. (3) (a) if the department finds that the
18 farmland preservation plan materially violates the requirements under s. 91.18.

19 **91.18 Requirements for certification of plan.** (1) A farmland preservation
20 plan qualifies for certification under s. 91.16 if it complies with all of the following:

21 (a) The requirements in s. 91.10 (1) and (2).

22 (b) Any other standards that the department specifies by rule.

23 (2) An amendment to a farmland preservation plan qualifies for certification
24 under s. 91.16 if it complies with all of the requirements in sub. (1) that are relevant

1 to the amendment and it does not cause the farmland preservation plan to violate
2 any of the requirements in sub. (1).

3 **91.20 Applying for certification of plan.** A county seeking certification of
4 a farmland preservation plan or amendment to a farmland preservation plan shall
5 submit all of the following to the department in writing, along with any other
6 relevant information that the county chooses to provide:

7 (1) The proposed farmland preservation plan or amendment.

8 (2) All of the following background information:

9 (a) A concise summary of the farmland preservation plan or amendment,
10 including key changes from any previously certified farmland preservation plan.

11 (b) A concise summary of the process by which the farmland preservation plan
12 or amendment was developed, including public hearings, notice to and involvement
13 of other governmental units within the county, approval by the county, and
14 identification of any key unresolved issues between the county and other
15 governmental units within the county related to the farmland preservation plan or
16 amendment.

17 (c) The relationship of the farmland preservation plan or amendment to any
18 county comprehensive plan.

19 (3) A statement, signed by the county corporation counsel and the county
20 planning director or chief elected official, certifying that the farmland preservation
21 plan or amendment complies with all of the requirements in s. 91.18.

22 (4) Other relevant information that the department requires by rule.

23 **SUBCHAPTER III**

24 **FARMLAND PRESERVATION ZONING**

1 **91.30 Authority to adopt.** A political subdivision may adopt a farmland
2 preservation zoning ordinance.

3 **91.32 Certified ordinance.** The following zoning ordinances are certified, for
4 the purposes of this chapter and s. 71.613:

5 (1) An exclusive agricultural use zoning ordinance that was certified under s.
6 91.06, 2005 stats., and the certification has not expired or been withdrawn.

7 (2) A farmland preservation zoning ordinance that was certified under s. 91.36
8 and the certification has not expired or been withdrawn.

9 **91.34 Expiration of zoning certification.** (1) The certification of a
10 farmland preservation zoning ordinance that was certified under s. 91.06, 2005
11 stats., expires on the date provided in the certification or, if the certification does not
12 provide an expiration date, on the following date:

13 (a) December 31, 2012, for a county with a population of 216 or more persons
14 per square mile or a city, village, or town in such a county.

15 (b) December 31, 2013, for a county with a population of 76 to 215 persons per
16 square mile or a city, village, or town in such a county.

17 (c) December 31, 2014, for a county with a population of 46 to 75 persons per
18 square mile or a city, village, or town in such a county.

19 (d) December 31, 2015, for a county with a population of 30 to 45 persons per
20 square mile or a city, village, or town in such a county.

21 (e) December 31, 2016, for a county with a population of 29 or fewer persons
22 per square mile or a city, village, or town in such a county.

23 (2) The certification of a farmland preservation zoning ordinance that the
24 department certifies under s. 91.36 expires on the date specified under s. 91.36 (2).

1 (3) The population of a county for the purposes of sub. (1) is the population on
2 the effective date of this subsection [revisor inserts date].

3 **91.36 Certification of zoning ordinance by the department. (1)**

4 GENERAL. The department may certify a farmland preservation zoning ordinance or
5 an amendment to a farmland preservation zoning ordinance as provided in this
6 section.

7 (2) CERTIFICATION PERIOD. (a) The department may certify a farmland
8 preservation zoning ordinance for a period that does not exceed 10 years. The
9 department shall specify the expiration date of the certification of the farmland
10 preservation zoning ordinance in the certification.

11 (b) The certification of an amendment to a certified farmland preservation
12 zoning ordinance expires on the date that the certification of the farmland
13 preservation zoning ordinance expires, except that the department may treat a
14 comprehensive revision of a certified farmland preservation zoning ordinance as a
15 new farmland preservation zoning ordinance and specify an expiration date for the
16 certification of the revised farmland preservation zoning ordinance as provided in
17 par. (a).

18 (3) SCOPE OF DEPARTMENT REVIEW. (a) The department may certify a farmland
19 preservation zoning ordinance or amendment to a farmland preservation zoning
20 ordinance based on statements submitted under s. 91.40 (3) (a) and (4), without
21 conducting any additional review or audit.

22 (b) The department may do any of the following before it certifies a farmland
23 preservation zoning ordinance or amendment:

24 1. Review the farmland preservation zoning ordinance or amendment for
25 compliance with the requirements under s. 91.38.

1 2. Review and independently verify the application for certification, including
2 the statements under s. 91.40 (3) and (4).

3 (4) DENIAL OF CERTIFICATION. The department shall deny an application for
4 certification of a farmland preservation zoning ordinance or amendment if the
5 department finds any of the following:

6 (a) That the farmland preservation zoning ordinance or amendment does not
7 comply with the requirements in s. 91.38.

8 (b) That the application for certification does not comply with s. 91.40.

9 (5) WRITTEN DECISION; DEADLINE. The department shall grant or deny an
10 application for certification under this section no more than 90 days after the day on
11 which the political subdivision submits a complete application, unless the political
12 subdivision agrees to an extension. The department shall issue its decision in the
13 form required by s. 227.47 (1).

14 (6) CONDITIONAL CERTIFICATION. The department may grant an application for
15 certification under this section subject to conditions specified by the department in
16 its decision under sub. (5). The department may certify a farmland preservation
17 zoning ordinance contingent upon the political subdivision adopting the farmland
18 preservation zoning ordinance as certified.

19 (7) EFFECTIVE DATE OF CERTIFICATION. A certification under this section takes
20 effect on the day on which the department issues the certification, except that if the
21 department specifies conditions under sub. (6), the certification takes effect on the
22 day on which the department determines that the political subdivision has met the
23 conditions.

24 (8) AMENDMENTS TO ORDINANCES; CERTIFICATION. (a) Except as provided in par.
25 (b), an amendment to a certified farmland preservation zoning ordinance is

1 automatically considered to be certified as part of the certified farmland preservation
2 zoning ordinance.

3 (b) An owner may not claim farmland preservation tax credits under an
4 amendment to a certified farmland preservation zoning ordinance that is one of the
5 following and that is adopted after the effective date of this paragraph [revisor
6 inserts date], unless the amendment is certified by the department under this
7 section:

8 1. An amendment that is a comprehensive revision of a certified farmland
9 preservation zoning ordinance.

10 2. An amendment that extends coverage of a certified farmland preservation
11 zoning ordinance to a town that was not previously covered.

12 3. An ordinance of a type specified by the department by rule that may
13 materially affect compliance of the certified farmland preservation zoning ordinance
14 with the requirements under s. 91.38.

15 (c) The department may withdraw certification of a farmland preservation
16 zoning ordinance if, as a result of an amendment adopted after the effective date of
17 this paragraph [revisor inserts date], the amended farmland preservation zoning
18 ordinance fails to comply with the requirements under s. 91.38. This paragraph
19 applies regardless of whether the farmland preservation zoning ordinance was
20 originally certified under s. 91.06, 2005 stats., or under this section.

21 (d) A political subdivision shall notify the department in writing whenever the
22 political subdivision adopts a material amendment to a certified farmland
23 preservation zoning ordinance. The political subdivision shall include a copy of the
24 amendment in the notice. For the purposes of this paragraph, an amendment that

1 rezones land out of a farmland preservation zoning district is not a material
2 amendment.

3 **91.38 Requirements for certification of ordinance.** (1) A farmland
4 preservation zoning ordinance does not qualify for certification under s. 91.36 unless
5 all of the following apply:

****NOTE: I (MES) removed the par. (a) that was in the /P1 draft because there is
no legal effect to require political subdivisions to follow current law.

6 (a) The farmland preservation zoning ordinance includes jurisdictional,
7 organizational, and enforcement provisions that are necessary for proper
8 administration.

9 (c) The farmland preservation zoning ordinance clearly designates farmland
10 preservation zoning districts in which land uses are limited in compliance with s.
11 91.42.

12 (d) The farmland preservation zoning ordinance includes maps that clearly
13 delineate each farmland preservation zoning district, so that a reader can easily
14 determine whether a parcel is within a farmland preservation zoning district; that
15 are correlated to the text under par. (e); and that comply with technical specifications
16 that the department establishes by rule.

17 (e) The text of the farmland preservation zoning ordinance clearly describes the
18 types of land uses authorized in each farmland preservation zoning district.

19 (f) The farmland preservation zoning ordinance is substantially consistent
20 with a certified farmland preservation plan.

21 (g) Except as provided by the department by rule, land is not included in a
22 farmland preservation zoning district unless the land is included in a farmland
23 preservation plan area identified in the county certified farmland preservation plan.

1 (h) If an overlay district, such as an environmental corridor, is superimposed
2 on a farmland preservation zoning district, all of the following apply:

3 1. The farmland preservation zoning ordinance clearly identifies the overlay
4 district as such.

5 2. The overlay district is shown on the maps under par. (d) in a way that allows
6 a reader to easily identify the underlying farmland preservation zoning district and
7 its boundaries.

8 3. The overlay district does not remove land use restrictions from the
9 underlying farmland preservation zoning district.

10 (i) The farmland preservation zoning ordinance complies with any other
11 requirements that the department specifies by rule.

12 (2) An amendment to a farmland preservation zoning ordinance qualifies for
13 certification under s. 91.36 if it complies with all of the requirements in sub. (1) that
14 are relevant to the amendment and it does not cause the farmland preservation
15 zoning ordinance to violate any of the requirements in sub. (1).

16 **91.40 Applying for certification of ordinance.** A political subdivision
17 seeking certification of a farmland preservation zoning ordinance or amendment to
18 a farmland preservation zoning ordinance shall submit all of the following to the
19 department in writing, along with any other relevant information that the political
20 subdivision chooses to provide:

21 (1) The complete farmland preservation zoning ordinance or amendment
22 proposed for certification.

23 (2) All of the following background information:

1 (a) A concise summary of the farmland preservation zoning ordinance or
2 amendment, including key changes from any previously certified farmland
3 preservation zoning ordinance.

4 (b) A concise summary of the process by which the farmland preservation
5 zoning ordinance or amendment was developed, including public hearings, notice to
6 and involvement of other governmental units, approval by the political subdivision,
7 and identification of any key unresolved issues with other governmental units
8 related to the farmland preservation zoning ordinance or amendment.

9 (c) A description of the relationship of the farmland preservation zoning
10 ordinance or amendment to the county certified farmland preservation plan,
11 including any material inconsistencies between the farmland preservation zoning
12 ordinance or amendment and the county certified farmland preservation plan.

13 (3) A statement, signed by the county planning director or the chief elected
14 official, certifying that the farmland preservation zoning ordinance or amendment
15 complies with s. 91.38 (1) (g) and (h).

16 (4) A statement, signed by the applicant's attorney or chief elected official,
17 certifying that the farmland preservation zoning ordinance or amendment complies
18 with all applicable requirements in s. 91.38.

19 (5) Other relevant information that the department requires by rule.

20 **91.42 Land use in farmland preservation zoning districts; general.** A
21 farmland preservation zoning ordinance does not qualify for certification under s.
22 91.36, if the farmland preservation zoning ordinance allows a land use in a farmland
23 preservation zoning district other than the following land uses:

24 (1) Uses identified as permitted uses in s. 91.44.

25 (2) Uses identified as conditional uses in s. 91.46.

1 **(3)** Prior nonconforming uses, subject to the following:

2 (a) A prior nonconforming use that is a residence may be expanded or
3 remodeled, as long as there is no increase in the number of dwelling units in the
4 residence.

5 (b) A prior nonconforming use that is not a residence may continue without
6 further approval unless it is materially altered.

7 (c) The proposed farmland preservation zoning districts under the farmland
8 preservation zoning ordinance contain only isolated prior nonconforming uses.

9 **(4)** Other uses allowed by the department by rule.

10 **91.44 Permitted uses.** (1) A farmland preservation zoning ordinance does
11 not comply with s. 91.42 if the farmland preservation zoning ordinance allows as a
12 permitted use in a farmland preservation zoning district a land use other than the
13 following land uses:

14 (a) Agricultural uses.

15 (b) Accessory uses.

16 (c) Agriculture-related uses.

17 (d) Nonfarm residences constructed in a rural residential cluster in accordance
18 with an approval of the cluster as a conditional use under s. 91.46 (1) (e).

19 (e) Undeveloped natural resource and open space areas.

20 (f) A transportation, utility, communication, or other use that is required under
21 state or federal law to be located in a specific place or that is authorized to be located
22 in a specific place under a state or federal law that preempts the requirement of a
23 conditional use permit for that use.

24 (g) Other uses identified by the department by rule.

1 (2) The department may promulgate rules imposing additional limits on the
2 permitted uses that may be allowed in a farmland preservation zoning district in
3 order for a farmland preservation zoning ordinance to comply with s. 91.42.

4 **91.46 Conditional uses.** (1) GENERAL. A farmland preservation zoning
5 ordinance does not comply with s. 91.42 if the farmland preservation zoning
6 ordinance allows as a conditional use in a farmland preservation zoning district a
7 land use other than the following land uses:

8 (a) Agricultural uses.

9 (b) Accessory uses.

10 (c) Agriculture-related uses.

11 (d) Nonfarm residences that qualify under sub. (2) or that meet more restrictive
12 standards in the farmland preservation zoning ordinance.

13 (e) Nonfarm residential clusters that qualify under sub. (3) or that meet more
14 restrictive standards in the farmland preservation zoning ordinance.

15 (f) Transportation, communications, pipeline, electric transmission, utility, or
16 drainage uses that qualify under sub. (4).

17 (g) Governmental, institutional, religious, or nonprofit community uses, other
18 than uses covered by par. (f), that qualify under sub. (5).

19 (h) Nonmetallic mineral extraction that qualifies under sub. (6).

20 (i) Oil and gas exploration or production that is licensed by the department of
21 natural resources under subch. II of ch. 295.

22 (j) Other uses allowed by the department by rule.

23 **(1m) ADDITIONAL LIMITATIONS.** The department may promulgate rules imposing
24 additional limits on the conditional uses that may be allowed in a farmland

1 preservation zoning district in order for a farmland preservation zoning ordinance
2 to comply with s. 91.42.

3 (2) NONFARM RESIDENCES. A nonfarm residence qualifies for the purposes of sub.
4 (1) (d) if it is a single-family residence and the political subdivision determines that
5 all of the following apply:

6 (a) The ratio of nonfarm residential acreage to farm acreage on the base farm
7 tract on which the nonfarm residence will be located will not be greater than 1 to 20
8 after the nonfarm residence is constructed.

9 (b) There will not be more than 4 nonfarm residences, nor more than 5
10 residences of any kind, on the base farm tract after the nonfarm residence is
11 constructed.

12 (c) The location of the proposed nonfarm residential parcel, and the location of
13 the nonfarm residence on that nonfarm residential parcel, will not do any of the
14 following:

15 1. Unnecessarily convert prime farmland from agricultural use.

****NOTE: Please see the discussion, in the drafter's note submitted with this draft,
of the use of "unnecessarily" and "necessary".

16 2. Significantly impair or limit the current or future agricultural use of other
17 protected farmland.

18 (3) NONFARM RESIDENTIAL CLUSTER. A political subdivision may issue one
19 conditional use permit that covers more than one nonfarm residence in a qualifying
20 nonfarm residential cluster. A nonfarm residential cluster qualifies for the purposes
21 of sub. (1) (e) if all of the following apply:

22 (a) The parcels on which the nonfarm residences would be located are
23 contiguous.

1 (b) The political subdivision imposes legal restrictions on the construction of
2 the nonfarm residences so that if all of the nonfarm residences were constructed,
3 each would satisfy the requirements under sub. (2).

4 (4) TRANSPORTATION, COMMUNICATIONS, PIPELINE, ELECTRIC TRANSMISSION, UTILITY,
5 OR DRAINAGE USE. A transportation, communications, pipeline, electric transmission,
6 utility, or drainage use qualifies for the purposes of sub. (1) (f) if all of the following
7 apply:

8 (a) The use and its location are necessary, considering alternative locations, or
9 are specifically approved under state or federal law.

10 (b) The use does not unnecessarily convert land from agricultural use to other
11 uses or unnecessarily develop undeveloped natural resource or open space areas.

12 (c) The use does not unnecessarily convert prime farmland from agricultural
13 use.

14 (d) The use does not unnecessarily impair or limit the current or future
15 agricultural use of other protected farmland.

16 (e) The farmland preservation zoning ordinance requires construction damage
17 to be limited and repaired, to the extent feasible, to maintain and restore the
18 agricultural use of the land.

19 (5) GOVERNMENTAL, INSTITUTIONAL, RELIGIOUS, OR NONPROFIT COMMUNITY USE. A
20 governmental, institutional, religious, or nonprofit community use qualifies for the
21 purposes of sub. (1) (g) if all of the following apply:

22 (a) The use and its location are necessary, considering alternative locations.

23 (b) The use does not unnecessarily convert land from agricultural use to other
24 uses or develop undeveloped natural resource or open space areas.

1 (c) The use does not unnecessarily convert prime farmland from agricultural
2 use.

3 (d) The sum of the following does not exceed 5 acres:

4 1. The acreage converted from agricultural use to other uses.

5 2. The acreage of undeveloped natural resource or open space areas developed.

6 (e) The use does not unnecessarily impair or limit the current or future
7 agricultural use of other protected farmland.

8 (f) The farmland preservation zoning ordinance requires construction damage
9 to be limited and repaired, to the extent feasible, to maintain and restore the
10 agricultural use of the land.

11 **(6) NONMETALLIC MINERAL EXTRACTION.** Nonmetallic mineral extraction
12 qualifies for the purposes of sub. (1) (h) if all of the following apply:

13 (a) The operation complies with subch. I of ch. 295 and rules promulgated under
14 that subchapter, with applicable provisions of the local ordinance under s. 295.13 or
15 295.14, and with any applicable requirements of the department of transportation
16 concerning the restoration of nonmetallic mining sites.

17 (b) The operation does not unnecessarily convert land from agricultural use to
18 other uses or develop undeveloped natural resource or open space areas.

19 (c) The operation does not unnecessarily convert prime farmland from
20 agricultural use.

21 (d) The operation does not unnecessarily impair or limit the current or future
22 agricultural use of other protected farmland.

23 (e) The farmland preservation zoning ordinance requires the land to be
24 restored to agricultural use, to the extent feasible and consistent with any required
25 locally approved reclamation plan, when extraction is completed.

91.48 Rezoning of land out of a farmland preservation zoning district.

(1) A political subdivision with a certified farmland preservation zoning ordinance may rezone land out of a farmland preservation zoning district without having the rezoning certified under s. 91.36, if all of the following apply:

(a) The political subdivision finds all of the following, after public hearing:

1. The land is better suited for a use not allowed in the farmland preservation zoning district.

2. The rezoning is consistent with any applicable comprehensive plan.

3. The rezoning is substantially consistent with the county certified farmland preservation plan.

4. The rezoning will not impair or limit the agricultural use of other protected farmland.

(b) The owner of the land pays to the political subdivision a conversion fee equal to the greater of the following:

1. One thousand dollars per acre of rezoned land or a different amount specified by the department by rule.

2. An amount specified in the certified farmland preservation ordinance.

(2) A political subdivision shall annually provide all of the following to the department and, if the political subdivision is not a county, to the county:

(a) A description of the amount of land that the political subdivision has rezoned out of a farmland preservation zoning district since the effective date of this paragraph [revisor inserts date], or since the date it last complied with this subsection, whichever is later, and a map that clearly shows the location of the land.

(b) A description of the amount of revenue that the political subdivision received as conversion fees under sub. (1) (b) since the effective date of this

1 paragraph [revisor inserts date], or since the date it last complied with this
2 subsection, whichever is later.

3 **91.49 Use of conversion fees.** A political subdivision shall use conversion
4 fees received under s. 91.48 (1) (b) for its costs related to farmland preservation
5 planning, zoning, or compliance monitoring.

6 **91.50 Exemption from special assessments.** (1) Except as provided in sub.
7 (3), no political subdivision, special purpose district, or other local governmental
8 entity may levy a special assessment for sanitary sewers or water against land in
9 agricultural use, if the land is located in a farmland preservation zoning district.

10 (2) A political subdivision, special purpose district or other local governmental
11 entity may deny the use of improvements for which the special assessment is levied
12 to land that is exempt from the assessment under sub. (1).

13 (3) The exemption under sub. (1) does not apply to an assessment that an owner
14 voluntarily pays, after the assessing authority provides notice of the exemption
15 under sub. (1).

16 SUBCHAPTER IV

17 FARMLAND PRESERVATION AGREEMENTS

18 **91.60 Farmland preservation agreements; general.** (1) AGREEMENTS
19 AUTHORIZED. The department may enter into a farmland preservation agreement, in
20 compliance with s. 91.62, with the owner of land that is eligible under sub. (2).

21 (2) ELIGIBLE LAND. Land is eligible if all of the following apply:

22 (a) The land consists of at least 35 contiguous acres on a farm that produced
23 at least \$6,000 in gross profits during the last taxable year preceding the year in
24 which the owner applies for a farmland preservation agreement or a total of at least
25 \$18,000 in gross farm profits during the last 3 taxable years preceding that year.

1 (b) The land is located in a farmland preservation area identified in a certified
2 farmland preservation plan.

3 (c) The department has promulgated rules for designating working lands
4 enterprise areas.

5 (d) The land is in a working lands enterprise area designated in accordance
6 with the rules under par. (c).

7 (3) PRIOR AGREEMENTS. (a) Except as provided in s. 91.66, a farmland
8 preservation agreement entered into before the effective date of this paragraph
9 [revisor inserts date], remains in effect for the term specified in the agreement and
10 under the terms that were agreed upon when the agreement was last created,
11 extended, or renewed.

12 (b) The department may not extend or renew a farmland preservation
13 agreement entered into before the effective date of this paragraph [revisor inserts
14 date.

15 **91.62 Farmland preservation agreements; requirements. (1) CONTENTS.**
16 The department may not enter into a farmland preservation agreement unless the
17 agreement does all of the following:

18 (a) Specifies a term of at least 15 years.

19 (b) Includes a correct legal description of the tract of land covered by the
20 farmland preservation agreement.

21 (c) Includes provisions that restrict the tract of land to the following uses:

22 1. Agricultural uses and accessory uses.

23 2. Undeveloped natural resource and open space uses.

24 (2) FORM. The department shall specify a form for farmland preservation
25 agreements that complies with s. 59.43 (2m).

1 **(3) EFFECTIVENESS.** A farmland preservation agreement takes effect when it is
2 signed by all owners of the land covered by the farmland preservation agreement and
3 by the department.

4 **(4) RECORDING.** The department shall provide a copy of a signed farmland
5 preservation agreement to a person designated by the signing owners and shall
6 promptly present the signed agreement to the register of deeds for the county in
7 which the land is located for recording.

8 **(5) CHANGE OF OWNERSHIP.** A farmland preservation agreement is binding on
9 a person who purchases land during the term of a farmland preservation agreement
10 that covers the land.

11 **91.64 Applying for a farmland preservation agreement. (1) SUBMITTING**
12 **AN APPLICATION.** An owner who wishes to enter into a farmland preservation
13 agreement shall submit an application, on a form provided by the department, to the
14 county clerk of the county in which the land is located.

15 **(2) CONTENTS OF APPLICATION.** A person submitting an application under sub.
16 (1) shall include all of the following in the application:

17 (a) The name and address of each person who has an ownership interest in the
18 land proposed for coverage by the agreement.

19 (b) The location of the land proposed for coverage, indicated by street address,
20 global positioning system coordinates, or township, range, and section.

21 (c) The legal description of the land proposed for coverage.

22 (d) A map or aerial photograph of the land proposed for coverage, showing
23 parcel boundaries, residences and other structures, and significant natural features.

24 (e) Information showing that the land proposed for coverage is eligible under
25 s. 91.60 (2).

1 (f) A description of every existing mortgage, easement and lien, other than liens
2 on growing crops, on land proposed for coverage, including the name and address of
3 the person holding the lien, mortgage, or easement.

4 (g) A signed agreement from each person required to be identified under par.
5 (f) subordinating the person's lien, mortgage, or easement to the agreement.

6 (h) Any other information required by the department by rule.

7 (i) Any fee under sub. (2m).

8 **(2m) COUNTY PROCESSING FEE.** A county may charge a reasonable fee for
9 processing an application for a farmland preservation agreement.

10 **(3) COUNTY REVIEW.** (a) A county shall review an application under sub. (2) to
11 determine whether the land proposed for coverage meets the requirements under s.
12 91.60 (2) (b) and (d). The county shall provide its findings to the applicant in writing
13 within 60 days after the day on which the county clerk receives a complete
14 application.

15 (b) If the county finds under par. (a) that the land proposed for coverage meets
16 the requirements under s. 91.60 (2) (b) and (d), the county shall promptly send all of
17 the following to the department, along with any other comments that the county
18 chooses to provide:

19 1. The original application, including all of the information provided with the
20 application.

21 2. A copy of the county's findings.

22 **(4) DEPARTMENT ACTION ON APPLICATION.** (a) The department may prepare a
23 farmland preservation agreement that complies with s. 91.62 and enter into the
24 farmland preservation agreement under s. 91.60 (1) based on a complete application
25 and on county findings under sub. (3) (b).

1 (b) The department may decline to enter into a farmland preservation
2 agreement for any of the following reasons:

3 1. The application is incomplete.

4 2. The land is not eligible land under s. 91.60 (2).

5 **91.66 Terminating a farmland preservation agreement.** (1) The
6 department may terminate a farmland preservation agreement or release land from
7 a farmland preservation agreement at any time if all of the following apply:

8 (a) All of the owners of land covered by the farmland preservation agreement
9 consent to the termination or release, in writing.

10 (b) The department finds that the termination or release will not impair or limit
11 agricultural use of other protected farmland.

12 (c) The owners of the land pay to the department a conversion fee equal to \$100
13 per acre of land released from the farmland preservation agreement or a different
14 amount specified by the department by rule, except that no conversion fee is required
15 if the land is converted from agricultural use by government purchase or
16 condemnation.

****NOTE: Should the amount of the fee be changed, given the change to proposed
s. 91.48 (1) (b)?

17 (2) The department shall provide a copy of its decision to terminate a farmland
18 preservation agreement or release land from a farmland preservation agreement to
19 a person designated by the owners of the land and shall present a copy of the decision
20 to the register of deeds for the county in which the land is located for recording.

21 **91.68 Violations of farmland preservation agreements.** (1) The
22 department may bring an action in circuit court to do any of the following:

23 (a) Enforce a farmland preservation agreement.

(b) Restrain, by temporary or permanent injunction, a change in land use that violates a farmland preservation agreement.

(c) Seek a civil forfeiture for a change in land use that violates a farmland preservation agreement.

(2) A forfeiture under sub. (1) (c) may not exceed twice the value of the land covered by the agreement at the time of the violation.

91.70 Farmland preservation agreements; exemption from special assessments. (1) Except as provided in sub. (3), no political subdivision, special purpose district, or other local governmental entity may levy a special assessment for sanitary sewers or water against land in agricultural use, if the land is covered by a farmland preservation agreement.

(2) A political subdivision, special purpose district or other local governmental entity may deny the use of improvements for which the special assessment is levied to land that is exempt from the assessment under sub. (1).

(3) The exemption under sub. (1) does not apply to an assessment that an owner voluntarily pays, after the assessing authority provides notice of the exemption under sub. (1).

SUBCHAPTER V

SOIL AND WATER CONSERVATION

91.80 Soil and water conservation by persons claiming tax credits. An owner claiming farmland preservation tax credits under s. 71.613 shall comply with applicable land and water conservation standards promulgated by the department under ss. 92.05 (3) (c) and (k), 92.14 (8), and 281.16 (3) (b) and (c).

91.82 Compliance monitoring. (1) COUNTY RESPONSIBILITY. (a) A county land conservation committee shall monitor compliance with s. 91.80.

1 (b) For the purpose of par. (a), a county land conservation committee shall
2 inspect each farm for which the owner claims farmland preservation tax credits at
3 least once every 4 years.

4 (c) For the purpose of par (a), a county land conservation committee may do any
5 of the following:

6 1. Inspect land that is covered by a farmland preservation agreement or
7 farmland preservation zoning and that is in agricultural use.

8 2. Require an owner to certify, not more than annually, that the owner complies
9 with s. 91.80.

10 (d) At least once every 4 years, the department shall review each county land
11 conservation committee's compliance with par. (b).

12 **(2) NOTICE OF NONCOMPLIANCE.** (a) A county land conservation committee may
13 issue a written notice of noncompliance to an owner if the committee finds that the
14 owner has done any of the following:

15 1. Failed to comply with s. 91.80.

16 2. Failed to permit a reasonable inspection under sub. (1) (c) 1.

17 3. Failed to certify compliance as required under sub. (1) (c) 2.

18 (b) A county land conservation committee shall provide to the department of
19 revenue a copy of each notice of noncompliance issued under par. (a).

20 (c) If a county land conservation committee determines that an owner has
21 corrected the failure described in a notice of noncompliance under par. (a), it shall
22 withdraw the notice of noncompliance and notify the owner and the department of
23 the withdrawal.

24 **(3) PROCEDURE.** The department may promulgate rules prescribing procedures
25 for the administration of this section by land conservation committees.

1 **SECTION 41.** 92.04 (2) (c) of the statutes is repealed.

2 **SECTION 42.** 92.05 (3) (L) of the statutes is amended to read:

3 92.05 (3) (L) *Technical assistance; performance standards.* The department
4 shall provide technical assistance to county land conservation committees and local
5 units of government for the development of ordinances that implement standards
6 adopted under s. 92.07 (2), ~~92.105 (1)~~, 92.15 (2) or (3) or 281.16 (3). The department's
7 technical assistance shall include preparing model ordinances, providing data
8 concerning the standards and reviewing draft ordinances to determine whether the
9 draft ordinances comply with applicable statutes and rules.

10 **SECTION 43.** 92.104 of the statutes is repealed.

11 **SECTION 44.** 92.105 of the statutes is repealed.

12 **SECTION 45.** 92.106 of the statutes is repealed.

13 **SECTION 46.** 92.14 (2) (e) of the statutes is amended to read:

14 92.14 (2) (e) ~~Promoting compliance with the requirements under ss. 92.104 and~~
15 ~~92.105~~ land and water conservation by persons claiming ~~a~~ farmland preservation
16 ~~credit~~ tax credits under subch. IX of ch. 71.

17 **SECTION 47.** 92.14 (3) (a) 1. of the statutes is amended to read:

18 92.14 (3) (a) 1. Compliance with soil and water conservation requirements
19 ~~under ss. 92.104 and 92.105 by applicable to~~ persons claiming ~~a~~ farmland
20 ~~preservation credit~~ tax credits under subch. IX of ch. 71.

21 **SECTION 48.** 92.14 (3) (d) of the statutes is amended to read:

22 92.14 (3) (d) Implementing land and water resource management projects
23 undertaken to comply with the soil and water conservation requirements ~~under ss.~~
24 ~~92.104 and 92.105 by applicable to~~ persons claiming ~~a~~ farmland preservation credit
25 tax credits under subch. IX of ch. 71.

1 **SECTION 49.** 101.143 (4) (ei) 1m. a. of the statutes is amended to read:

2 101.143 (4) (ei) 1m. a. The owner or operator of the farm tank owns a parcel
3 of 35 or more acres of contiguous land, on which the farm tank is located, which is
4 devoted primarily to agricultural use, as defined in s. 91.01 (1), including land
5 designated by the department of natural resources as part of the ice age trail under
6 s. 23.17, which during the year preceding submission of a first claim under sub. (3)
7 produced gross farm profits, as defined in s. ~~71.58 (4)~~ 71.613 (1) (g), of not less than
8 \$6,000 or which, during the 3 years preceding that submission produced gross farm
9 profits, as defined in s. ~~71.58 (4)~~ 71.613 (1) (g), of not less than \$18,000, or a parcel
10 of 35 or more acres, on which the farm tank is located, of which at least 35 acres,
11 during part or all of the year preceding that submission, were enrolled in the
12 conservation reserve program under 16 USC 3831 to 3836.

13 **SECTION 50.** 101.143 (4) (ei) 1m. b. of the statutes is amended to read:

14 101.143 (4) (ei) 1m. b. The claim is submitted by a person who, at the time that
15 the notification was made under sub. (3) (a) 3., was the owner of the farm tank and
16 owned a parcel of 35 or more acres of contiguous land, on which the farm tank is or
17 was located, which was devoted primarily to agricultural use, as defined in s. 91.01
18 (1), including land designated by the department of natural resources as part of the
19 ice age trail under s. 23.17, which during the year preceding that notification
20 produced gross farm profits, as defined in s. 71.58 (4), of not less than \$6,000 or
21 which, during the 3 years preceding that notification, produced gross farm profits,
22 as defined in s. ~~71.58 (4)~~ 71.613 (1) (g), of not less than \$18,000, or a parcel of 35 or
23 more acres, on which the farm tank is located, of which at least 35 acres, during part
24 or all of the year preceding that notification, were enrolled in the conservation
25 reserve program under 16 USC 3831 to 3836.

1 **SECTION 51.** 165.25 (4) (ar) of the statutes, as affected by 2007 Wisconsin Acts
2 76 and 96, is repealed and recreated to read:

3 165.25 (4) (ar) The department of justice shall furnish all legal services
4 required by the department of agriculture, trade and consumer protection relating
5 to the enforcement of ss. 91.68, 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
6 100.182, 100.195, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42,
7 100.50, 100.51, and 100.55 and chs. 126, 136, 344, 704, 707, and 779, together with
8 any other services as are necessarily connected to the legal services.

9 **SECTION 52.** 281.16 (3) (e) of the statutes is amended to read:

10 281.16 (3) (e) An owner or operator of an agricultural facility or practice that
11 is in existence before October 14, 1997, may not be required by this state or a
12 municipality to comply with the performance standards, prohibitions, conservation
13 practices or technical standards under this subsection unless cost-sharing is
14 available, under s. 92.14 or 281.65 or from any other source, to the owner or operator.
15 For the purposes of this paragraph, sub. (4) and ss. 92.07 (2), ~~92.105 (1)~~, 92.15 (4) and
16 823.08 (3) (c) 2., the department of natural resources shall promulgate rules that
17 specify criteria for determining whether cost-sharing is available under s. 281.65
18 and the department of agriculture, trade and consumer protection shall promulgate
19 rules that specify criteria for determining whether cost-sharing is available under
20 s. 92.14 or from any other source. The rules may not allow a determination that
21 cost-sharing is available to meet local regulations under s. 92.07 (2), ~~92.105 (1)~~ or
22 92.15 that are consistent with or that exceed the performance standards,
23 prohibitions, conservation practices or technical standards under this subsection
24 unless the cost-sharing is at least 70% of the cost of compliance or is from 70% to 90%
25 of the cost of compliance in cases of economic hardship, as defined in the rules.

SECTION 53. 281.65 (5) (b) of the statutes is amended to read:

281.65 (5) (b) Prepare sections of the priority watershed or priority lake plan relating to farm-specific implementation schedules, requirements under ss. ~~92.104 and 92.105~~ 281.16 (3) (e), animal waste management and selection of agriculturally related best management practices and submit those sections to the department for inclusion under sub. (4m) (b). The best management practices shall be cost-effective best management practices, as specified under sub. (4) (e), except in situations in which the use of a cost-effective best management practice will not contribute to water quality improvement or will cause a water body to continue to be impaired as identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

SECTION 54. 281.65 (5) (d) of the statutes is amended to read:

281.65 (5) (d) Develop a grant disbursement and project management schedule for agriculturally related best management practices to be included in a plan established under sub. (4) (g) and identify recommendations for implementing activities or projects under ss. 92.10, ~~92.104 and 92.105~~ and 281.16 (3) (e).

SECTION 55. 281.65 (5) (e) of the statutes is amended to read:

281.65 (5) (e) Identify areas within a priority watershed or priority lake area that are subject to activities required under ss. 92.104 and 92.105 s. 281.16 (3) (e).

(END)